

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**APR 11 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

FELIPE JAQUEZ-MERCADO,

Defendant - Appellant.

No. 05-50683

D.C. No. CR-04-03108-NAJ

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Napoleon A. Jones, District Judge, Presiding

Submitted April 7, 2006\*\*  
Pasadena, California

Before: D.W. NELSON and O'SCANNLAIN, Circuit Judges, and JONES\*\*\*,  
District Judge.

Felipe Jaquez-Mercado appeals his sentence and conviction for being a  
deported alien found in the United States in violation of 8 U.S.C. § 1326, arguing

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\* This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Robert C. Jones, District Judge for the District of  
Nevada, sitting by designation.

that (1) § 1326 is unconstitutional; (2) the district court should have dismissed the indictment because it was supported by an uncounseled deportation; and (3) the indictment was insufficient because it did not allege either voluntary entry or the *mens rea* element. We have jurisdiction pursuant to 42 U.S.C. § 1291, and we affirm.

Jaquez's argument that *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) rendered unconstitutional 8 U.S.C. § 1326 is foreclosed by *United States v. Bahena-Cardenas*, 411 F.3d 1067, 1073 (9th Cir. 2005). We have also previously rejected claims identical to his claim that 8 U.S.C. § 1326 is unconstitutional as applied because the indictment pursuant to which he was convicted was supported by a deportation proceeding at which Jaquez was not represented by counsel. *See United States v. Rivera-Sillas*, 417 F.3d 1014, 1017-18 (9th Cir. 2005).

Similarly precluded by binding Ninth Circuit authority are Jaquez's challenges to the sufficiency of the indictment. An indictment charging that a deported alien is "found in" the United States in violation of 8 U.S.C. § 1326 need not allege voluntary entry or *mens rea*. *Rivera-Sillas*, 417 F.3d at 1019-21; *United States v. Parga-Rosas*, 238 F.3d 1209, 1213-14 (9th Cir. 2001).

**AFFIRMED.**